pepco
Energy Services

February 17, 2005

VIA FEDERAL EXPRESS

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: Docket No. E005010001 – In the Matter of New Jersey Voluntary Green Power Choice Program

Dear Secretary Izzo:

Enclosed for filing in the above-captioned matter are an original and five (5) copies of Pepco Energy Services, Inc.'s Comments. A diskette containing the electronic version of this filing is also enclosed. Additionally, an extra copy of this transmittal letter is enclosed, please date stamp and return in the postage paid envelope.

If you have any questions pertaining to this filing please do not hesitate to contact the undersigned at 703-253-1641.

Very truly yours,

Wayne Hudders

Wayne Hudders
Senior Analyst

Enclosure

BEFORE
THE
NEW JERSEY
BOARD OF PUBLIC UTILITIES

New Jersey Voluntary
Green Power Choice Program

Docket No. E005010001

COMMENTS
OF
PEPCO ENERGY SERVICES, INC.

I. INTRODUCTION

On January 24, 2005, the New Jersey Board of Public Utilities ("BPU" or "Board") provided notice of the "Public Comment Period" and "Public Hearing" on the draft proposal for a Voluntary Standard Green Policy Program. The draft proposal summarizes the general framework and design, business rules, and technical standards for the voluntary NJ Green Power Choice (GPC) Program as sponsored by the New Jersey Office of Clean Energy ("OCE"). In accordance with the notice, Pepco Energy Services, Inc. ("PES") hereby files these comments.

II. BACKGROUND

PES is one of the largest, if not the largest, supplier of renewable energy to customers in the mid-Atlantic region. PES is a licensed electricity supplier in New Jersey, Pennsylvania, Maryland, Delaware, District of Columbia, New York, Illinois and Virginia. We actively participate in various working groups in these jurisdictions and have experience working with the different commissions' staffs as they implement various retail choice and environmental regulations, statutes, and requirements. We hope that our experience in these other jurisdictions which is reflected in our comments will assist the Board as it begins to implement the New Jersey Voluntary Green Power Choice Program.

The stated goal of the Voluntary New Jersey Green Power Choice Program is to "*empower New Jersey electric customers to increase their personal commitment and consumer demand for clean energy products over and above the Renewable Portfolio Standard*" by "*allowing Electric Distribution Company customers who wish to pay a premium to encourage the development and expansion of renewable energy sources a "green power option" without having to leave the certainty and services of their current utility.*"

Throughout the working group process, PES has advocated that the provision of green energy products should be provided in the competitive market. PES believes that Basic Generation Service should be basic generation and that customers who desire to purchase a green energy product should avail themselves of the competitive market place. To the extent, customers do not want to purchase a green energy product, or such a product is unavailable, they should be able to purchase renewable energy credits ("RECs"). Implementation of any REC program should be undertaken in a manner that will encourage the development of renewable resources and at the same time not retard or deter the development of the competitive market place. Some of the proposals contained in the draft proposal for the Voluntary New Jersey Green Power Choice Program will have the opposite effect, and thus these provisions or proposals should be either modified or rejected.

III. DISCUSSION

A. Program Design Issues

A review of the draft proposal reveals that the basic premise and structure of the proposed program is not consistent with N.J.A.C 14:3-8.8. Specifically, N.J.A.C. 14:3-8.8 provides that the only type of renewable resource that can be used as a REC is solar power, and all other renewable generation resources the energy must be delivered to the end use customer. As drafted the proposed program is designed as a REC exclusive program that includes the eligibility of diverse renewable resources and thus appears to be inconsistent with the current applicable law that indicates that only solar RECs can be offered by participating "Green Power Marketers". While the draft proposal states that "*Once the GATS system is operational and PJM* *interconnection begins issuing class 1 and class II RECs, the Board may issue an order approving use of class I and class II RECs issued by PJM interconnection for compliance with this subchapter.*" It does not appear to be certain that the Board will definitely issue the proposed modifying order, nor does the proposal state what will happen if the GATS system is delayed or experiences start up glitches. If other renewable resources are to be permissible resources as part of the Voluntary Green Power Choice Program then this must be perfectly and clearly stated at the outset of the program. Without this clarification, competitive suppliers who may have participated in this program may not participate and thus put in jeopardy the success of the program.

Similarly, the draft proposal does not state the minimum performance and reporting requirements for Green Power Markets, only that they will be developed and finalized by the BPU. These are major components of the program that need to be determined before any Green Power Marketer can participant in the program and should be developed prior to implementing the program to ensure that the final rules and qualifications will lead to a successful program. Furthermore, as presently drafted some of the proposed rules for competitive suppliers to participate in this program are more onerous and costly than being licensed as a competitive supplier of energy. The additional costs and onerous requirements will discourage participation or result in additional costs for compliance resulting in either lower supplier participation or increases in the price offerings to New Jersey customers. [Example: The additional licensing requirement for existing competitive suppliers plus the $1000 certification fee.]

In general, uncertainties of the program should be fully addressed and resolved prior to Green Power Marketers or the State committing resources to implement the Green Power Choice Program.

B. Program Cost Issues

Pepco Energy Services is concerned that the cost for Green Power Marketers to participate in the program will cause the price of potential product offerings to be higher than New Jersey customers will want or should have to pay. While Pepco Energy Services understands the desirability of being able to offer every New Jersey customer the same green power choice options, this requirement could be cost prohibitive for Green Power Marketers. To become a "Green Power Marketer" in a utility's territory each marketer must become EDI certified in each territory. Pepco Energy Services estimates that the cost of becoming EDI certified is between $30,000 - $50,000 per territory. These costs are primarily due to EDI testing costs incurred by the billing services provider. Since the Rockland Electric Territory is much smaller than other electric distribution companies' service territories in New Jersey, it would be difficult to "break even" in Rockland, leaving the Green Power Marketer with two options, not entering the market at all, or having customers in other territories in effect subsidize customers in Rockland. Therefore, the program should permit Green Power Marketers to determine which service territories or territory in which they would like to conduct business.

PES is also concerned about certification and verification costs. PES agrees with the draft proposal that the GATS system is the preferred method for verifying the validity of green energy sales. However, PES is concerned about the cost of proposed certification requirements. The draft proposal implies that the Green Power Marketer will need to obtain third party certification through an organization such as Green-e. PES believes that this requirement is unnecessary. Suppliers are already required to provide accurate and verifiable data to support their competitive green power offerings; this product would be no different. The requirement to have a Green-e certification or equivalent will simple add to the cost of providing the product with no offsetting benefit to the consumer. Furthermore, Green-e and other independent certification providers may require requirements (such as requirements for "New Renewables") that are above and beyond what is required by the New Jersey Green Choice Program, thus creating additional costs for Green Power Marketers. The BPU should set forth the guidelines for the program and should structure the process to ensure that the certification process is consistent and complies with the renewable resources approved for use for this program.

The requirement that a Green Power Marketer must commit to the program for two years will also be costly and onerous to marketers. If marketers' product offerings are not well received by the market or if other market or regulatory conditions impact the cost of the product offering, the marketer is still required to offer that product for two years. While PES believes that marketers should not be allowed to abandon any existing customers, they should be allowed to leave the market if market conditions cause their products to be economically unviable. The limitation of the types of products a competitive supplier can offer under the proposal exacerbates this problem. Competitive suppliers are not permitted to offer more than one product on the sign up ballot proposed for the program. Multiple product offerings and flexibility increases customers as well as suppliers' participation. The ability of marketers to have a diverse supply portfolio assists in mitigating risks to suppliers and thus allows marketers to provide service offerings to consumers in a more economic manner. The Board should consider providing suppliers more flexibility in their product offerings and eliminate the two year program mandate.

The draft proposal also contains the recommendation to have an "annual open season enrollment" certification program. While, the initiation of the first program year may need to have a limited open season, PES does not believe that thereafter the requirement would be needed. The concept of an "annual open enrollment" will limit the opportunity for competitive suppliers to enter the New Jersey market. A supplier that is unaware of the program and discovers it after the "annual open enrollment" period would be precluded from offering its products to New Jersey customers. Thus, this potential offering would not be available to customers, simply due to an arbitrary time limitation. The market is fluid, the pricing of products are fluid and the ability to enter a marketplace should be fluid. The annual open enrollment requirement will stagnate the market place and limit the number of participating suppliers. Greater participation of marketers will result in more competitive offerings being made to New Jersey customers and open access to the market will permit cost savings to be shared with customers.

Finally, as stated on page 8 of the draft proposal, the overall costs to the State have not yet been estimated. PES believes that an evaluation of all costs associated with implementing this program needs to take place prior to implementing the program. To be fiscally responsible to New Jersey ratepayers, a very basic examination of costs should be undertaken before authorizing the spending of ratepayer funds, (societal benefits charge). Parties to this proceeding should be able to present to the BPU sufficient cost data and implementation details in order for the BPU to make an informed decision regarding whether the program to be implemented has been structured in the most cost effective manner.

C. Eligibility of Resources

The draft proposal states that the products to be included in the program must be products that meet New Jersey's Class 1 RPS definition, low-impact hydropower or small hydro generation under 30MW. The latter two resources are classified as Class II under the Renewal Portfolio Standard ("RPS") definition. Since the New Jersey legislature through the RPS initiative, has established that all Class I and Class II resources can be used to foster the State's environmental efforts, all of these resources should be available for use in the voluntary green choice program. The goal of this current effort should not be to confuse customers with new classifications of class II resources or to redefine the definitions of Class I and Class II that have been established by the state legislature.

Also, the draft proposal limits product offering of suppliers to products that contains 100% of a residential customer's usage. (There is no such limit for commercial customers) PES's experiences with residential green power markets has shown us that most customers do not want a 100% green product due to the higher cost of the product. Choice was intended to provide consumers with a variety of products that are differentiated by different product characteristics, services and prices. To foster this concept and to promote the success of this program PES recommends that Green Power Marketers should be able to offer products that may or may not equate to 100% of a residential customers usage as is consistent with the offerings allowed for commercial customers.

D. Confidentiality Issues

Pepco Energy Services is concerned about the requirement that a Green Power Marketers must provide its marketing plan to the Office of Clean Energy as this information is considered highly confidential in the competitive market place. While the current proposal states that this information will remain confidential, PES is concerned how the information will be used and how confidentiality will be maintained as the dissemination of such information could undermine an otherwise successful marketing campaign and product offering. Likewise, PES objects to having to provide a list of customers by zip+4 for the public record, as individual customer information should be treated as confidential, and while not specifically naming customers, zip+4 gives an observer or a competitor a very detailed description of who a marketers customers are. While the proposal indicated the concern of protecting customer privacy, this requirement has the opposite affect of said concern.

Finally, some of the requirements contained in draft agreements are problematic and could lead to arbitrary abuse and delay in the marketing efforts of marketers. As drafted, these documents will not foster the development of this program. For example, one provision of the Sample Logo Use Agreement (Appendix B) indicates that a Green Power Marketer would be banned from participating in the program if its marketing materials have not been approved prior to use. In particular, the proposed agreement provides,

> Section C. "Company approval. Prior to any broadcast, transmittal or release of Program Materials that contain Company's Logo to any person outside of ATSO Supplier and its employees, contractors, and/or agents working on such Program Materials, ATSO Supplier shall: submit a copy of such Program Materials to Company so that Company can ensure that ATSO Supplier's proposed use of Company's Logo complies with the requirements of this Section 1; and obtain Company's written approval of such Program Materials. Company's review of Program Materials shall be in accordance with Paragraph 3, below."
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> Paragraph 3 states "...Company review. ATSO Supplier shall submit a copy of each group of proposed Program and Marketing Materials that requires Company's review and approval to Company's representative listed below in this Paragraph 3 at least six (6) business days prior to ATSO Supplier's planned use of such group of Materials. Company shall either approve or reject, in writing, each group of Program and Marketing materials no later than five (5) business days after receipt of such materials by Company's representative...Failure to obtain any required prior approval from Company for the use of Program or Marketing Materials may result in Company denying ATSO Supplier use of Company's Logo and name in any subsequent Program or Marketing Materials."

If the marketer has to wait for approval and approval is arbitrarily delayed, the ability to offer a product at a savings to consumer would be denied. As long as the marketing material is consistent with the dictates of the program, incorporating an arbitrary review requirement that will delay in affording the GPM to make a competitive offerings to consumers will hinder the development of the market. There are several mechanisms in place to foster compliance with the program dictates; this requirement is not necessary and overly burdensome or the agreement could be modified by adding language that indicates if the utility does not respond in the required time period or in the prescribed manner implied consent has been given to the GPM. This modification will foster compliance of the intended result by both the utility and the GPM.

IV. CONCLUSION

Pepco Energy Services hopes that the Board of Public Utilities will take under advisement our comments and suggestions set forth today. PES would like for the New Jersey Green Power Choice Program to be a success and believes that the suggestions set forth herein will assist in accomplishing this outcome.

Respectfully submitted,
PEPCO ENERGY SERVICES, INC.

Wayne Hudders

Wayne Hudders
Senior Analyst

PEPCO ENERGY SERVICES, INC.
1300 North 17th Street - Suite 1600
Arlington, VA 22209
703-253-1800

Dated: February 17, 2005